



Planning circular

PLANNING SYSTEM

Codes; Planning Systems; Hazards and Resilience

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| Circular | PS 21-036 |
| Issued | 2 December 2021 |
| Related | Replaces PS 09-031 |

Exempt and Complying Development Codes: asbestos material

This circular informs councils, accredited certifiers and the community about standards and requirements for anyone that removes or demolishes asbestos material for new building construction, or the alteration or an addition to existing buildings as complying or exempt development.

Background

On 18 January 2010, the *Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009* and *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Asbestos) 2009* came into effect to ensure the safe handling and disposal of asbestos.

These instruments introduced additional standards and requirements for demolition involving asbestos removal as part of exempt and complying development, and imposed conditions on the safe handling of asbestos as complying development.

Some of the standards and requirements are contained in other regulatory regimes and carried on in subsequent iterations (i.e. the former Occupational Health and Safety Regulation 2001, which is now the *Work Health and Safety Regulation 2017* (WH&S Regulation)) and *Australian Standard 2601-2001 — The demolition of structures* (AS 2601-2001)).

Removal of asbestos – exempt and complying development

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) allows for demolition or removal of a range of development as either exempt or complying development.

- Exempt Development: Subdivision 13 Demolition (clause 2.25) lists the types of development specified as exempt development.
- Complying Development: Part 7 Demolition Code (clause 7.1 (1)) lists the types of development specified as complying development.

Removal of asbestos as complying development

Clause 136E of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) applies to complying development certificates if the development involves removal of:

- bonded asbestos of an area of more than 10 sqm or
- friable asbestos.

It does not apply to situations where bonded asbestos removal is less than 10sqm in total.

The Regulation requires the complying development certificate for development that involves building work or demolition work to be issued subject to the following conditions:

- The person having the benefit of the complying development certificate must provide a certifier with a signed contract to prove that asbestos removal will be conducted by a licensed removalist (see below).
- The contract indicates the lawful landfill site to accept the removed asbestos. This will guarantee that disposal of asbestos complies with Part 7 of the *Protection of the Environment Operations (Waste) Regulation 2014*.
- The person having the benefit of the complying development certificate must provide a certifier with a copy of a receipt from the landfill operator stating that all the asbestos material referred to in the contract has been received by the operator.

Who can carry out the work as complying development - licensed removalist

A licensed removalist is defined as a person who carries on a business of such removal work in accordance with a license under clause 458 of the WH&S Regulation. An owner-builder cannot carry out asbestos removal work by themselves.

Removal of asbestos as exempt development

The Codes SEPP requires that the work must be carried out in accordance with AS 2601—2001 which requires the removal of asbestos or materials containing asbestos fibres to be in accordance with the The SafeWork Australia *Model Code of Practice: How to safely remove asbestos*. This includes that a removalist holding the proper licence must be used if the development involves removal of:

- bonded asbestos of an area of more than 10 sqm or
- friable asbestos.

Businesses are licensed to undertake asbestos removal work under the WH&S Regulation. The SafeWork Australia *Model Code of Practice: How to safely remove asbestos* provides guidance on achieving the standards required under work health and safety laws and effective ways to identify and manage risks.

If the work is not required to be undertaken by a licensed contractor, it should still be undertaken in a manner that minimises risk.

Information on the removal and disposal of asbestos to landfill sites licensed to accept this waste is available from the NSW Environment Protection Authority's website.

Further information

Further information and resources on asbestos safety at work and home, and how to dispose of it safely can be viewed at SafeWork NSW website at safework.nsw.gov.au/hazards-a-z/asbestos and the

NSW Government's Asbestos in NSW website at asbestos.nsw.gov.au/

Codes SEPP

Information about the Codes SEPP is available on the Department's website at planning.nsw.gov.au/housingcode

For further information, please contact codes@planning.nsw.gov.au or call the Department of Planning, Industry and Environment on 02 8289 6600.

Asbestos removal—information for the community

Please contact SafeWork NSW for *Working with asbestos: guide (2008)* and *Fibro and asbestos: a renovator and homeowner's guide (2004)* at safework.nsw.gov.au/contact-us

The SafeWork Australia *Model Code of Practice: How to safely remove asbestos* is an approved code of practice under section 274 of the *Work Health and Safety Act 2011*. It provides practical guidance on how to manage health and safety risks associated with identifying and removing asbestos or asbestos-containing materials and can be accessed through the SafeWork Australia website or at safework.nsw.gov.au/hazards-a-z/asbestos

Department of Planning, Industry and Environment circulars are available at: planning.nsw.gov.au/circulars

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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